

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA

4 v. 10 Cr. 228 (LTS)

5 DANIEL BONVENTRE,
6 JEROME O'HARA,
7 GEORGE PEREZ,
8 ANNETTE BONGIORNO,
9 JOANN CRUPI,

Jury Trial

8 Defendants.

9 -----x

New York, N.Y.
January 8, 2014
9:00 a.m.

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Before:

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HON. LAURA TAYLOR SWAIN

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District Judge

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APPEARANCES

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Southern District of New York

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1 We are going to have a little switch up in the
2 evidence to accommodate schedules. So this morning we'll be
3 hearing from a new witness before we resume with the
4 cross-examination of Mr. DiPascali. So the government may call
5 the next witness.

6 MR. ZACH: Thank you, your Honor. The government
7 calls Christine Coe.

8 (Witness called)

9 THE COURT: Good morning, Ms. Co. Please step up into
10 the witness stand, and then remain standing and face the
11 courtroom deputy, who will administer the oath. Thank you.

12 CHRISTINE COE,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 THE COURT: Thank you. Ms. Co, please be seated and
16 be sure to speak into the microphone in giving your testimony.
17 Thank you. Mr. Zach.

18 MR. ZACH: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. ZACH:

21 Q. Good morning, Ms. Coe.

22 A. Good morning.

23 Q. Can you pull the microphone just a little bit closer?

24 A. Okay. Is that okay?

25 Q. That's perfect. Thank you. Ms. Coe, where did you grow

1 up?

2 A. I grew up in England.

3 Q. Are you from England?

4 A. I am English; that is correct.

5 Q. And where do you work now?

6 A. I have recently left HSBC. I'm still doing some contract
7 work for them and some freelance work within the financial
8 services industry.

9 Q. But did you spend a lot of your career at HSBC?

10 A. I did.

11 Q. What is HSBC?

12 A. HSBC is a major global bank. I spent the whole of my
13 working life there. I started when I was 16, and I've worked
14 all over the world with them.

15 Q. Okay. And HSBC has offices all over the world?

16 A. It has offices all over the world.

17 Q. And could you describe for us a bit about the various
18 positions you held at HSBC over the course of your career
19 there?

20 A. Yes, I can. I have -- I started work in a branch,
21 literally, being a cashier, and then I migrated into risk
22 management. And I worked in a specialism called credit and
23 risk. So I would look at people's loan applications, and I did
24 that across ordinary applications for people who just wanted a
25 loan for, say, a car or a mortgage. And then I moved into more

1 commercial lending and, latterly, into looking at loans for
2 major financial institutions such as asset managers, mutual
3 funds and hedge funds.

4 Q. So what year did you start at HSBC?

5 A. I started in 1971.

6 Q. Okay. And when you say you were a cashier, would that be
7 similar to what's called a bank teller?

8 A. That is correct.

9 Q. And was it called HSBC when you started?

10 A. No. I was actually started at Midland Bank, and HSBC
11 bought Midland Bank.

12 Q. And you worked your way, over the years, into risk
13 management, and at the end, what was your title right before
14 you went part time or left the bank?

15 A. My title was the Global Head for Funds, and I had global
16 responsibility for all funds that we had as customers.

17 Q. So through the course of your career, you worked your way
18 from being sort of entry level cashier, all the way to being
19 the Global Head of risk management?

20 A. That's correct.

21 Q. All right. Now, let me ask you another question. What
22 does -- what do the letters for HSBC stand for?

23 A. Well, today, HSBC stands for HSBC, but its origins were the
24 Hong Kong and Shanghai Bank Corporation.

25 Q. So the HSBC was the first letter of the Hong Kong Shanghai

1 Bank Corporation?

2 A. That's correct.

3 Q. Could you tell us a little bit about what risk management
4 is?

5 A. Yes, of course. There were several parts to it. They're
6 predominantly looking at making sure the bank doesn't lose
7 money, and that can be through customers not paying back loans
8 that they have granted, or it could be because the operational
9 support that is given to manage those loans is defective in
10 some way. And my job through the years was to make sure all of
11 that worked.

12 Q. Okay. Just one favor to ask of you, and it's for the court
13 reporter. When you answer, would you go a little bit slower?

14 A. I'm sorry.

15 Q. It's all right. It's all right. I do that all the time as
16 well.

17 Now, when just talking about risk management for a
18 moment, so taking a loan as an example, what sorts of -- just
19 generally, what sorts of risks would a bank look at if they
20 were going to loan to someone; so we get a look at the types of
21 risks that are managed by a bank?

22 A. Well, we would look at the customer that was applying for
23 the loan to see whether they had any previous borrowing
24 experience and whether they had paid back previous loans, what
25 the purpose of the loan was for, whether that loan was secured

1 in some way, what the legal contracts would be that supported
2 the lending, and the term that the customer wanted to repay
3 that loan over.

4 Q. And when you talk about a loan being secured, what do you
5 mean by securing a loan?

6 A. Well, it would be, we would lend the money and then we
7 would take some security interest, like a mortgage, or in the
8 case of funds, we would take an interest in the investments
9 that the fund had made. So those investments would have a
10 security charge over them in order to repay the loan if the
11 customer could not repay by any other means.

12 Q. Now, Ms. Coe, I'd like to fast forward to the 2000s. What,
13 as the 2000s began, around the mid-2000s, let's say, what was
14 your position at the bank?

15 A. In early 2000, I was the head of risk for the global
16 custody business of HSBC; so that business looked after
17 institutions' assets. So say a mutual fund would invest in
18 lots of equities, it could be HSBC's global custody
19 responsibility to make sure that those equities were looked
20 after.

21 Q. When you say looked after, what do you mean by that?

22 A. Safekeeping, in the sense that we would maintain all of the
23 records of those equities that that fund had invested into. So
24 that those records would give the legal record of what that
25 mutual fund owns.

1 So all of the transactions, when they bought and sold
2 an equity, would go through those records, and HSBC would hold
3 them to prove that that fund actually had those investments as
4 part of its portfolio.

5 Q. And where in the world were you located during this time
6 period?

7 A. I was located in London, but we operated custody in 90
8 countries across the world.

9 Q. So your home base was in London, but you had
10 responsibilities all across the globe?

11 A. That's correct.

12 Q. Now, during the 2000s, did HSBC take over another bank
13 called Bank of Bermuda?

14 A. That's correct.

15 Q. This may be a silly question, but where was the Bank of
16 Bermuda located?

17 A. It's head office was in Bermuda.

18 Q. And about what year did HSBC take over the Bank of Bermuda?

19 A. It was taken over in February of 2004.

20 Q. And about how big was the Bank of Bermuda?

21 A. It was relatively tiny. In revenue terms, the -- it was
22 making about \$35 million a year.

23 Q. When you -- when HSBC took over Bank of Bermuda, did that
24 cause you to do any more work, or did you have any involvement
25 in the -- with the Bank of Bermuda after it was taken over?

1 A. As soon as we purchased the Bank of Bermuda, all of the
2 clients which were fund clients became my responsibility, from
3 a risk perspective. What happened was immediately after the
4 purchase, we didn't change anything. So any loans that were
5 made by the Bank of Bermuda stayed in place, but as those loans
6 came up for review, which would happen once a year, they would
7 come to me and my team to look at -- to see whether those loans
8 met the HSBC criteria for lending money.

9 Q. So let's break that down for a second, but before we do
10 that, I want to ask you, when HSBC took over the Bank of
11 Bermuda, did you come to learn that the Bank of Bermuda had
12 been having business with a series of investment funds?

13 A. With a series of investment?

14 Q. Funds.

15 A. Yes, I did.

16 (Continued on next page)

1 Q. What were the names of some of those funds?

2 A. There were a number of funds, like Thema, Optimal, Herald,
3 Kingate. There were many, a wide variety of different fund
4 types.

5 Q. When we are talking about funds, can we agree that we are
6 talking about businesses that invest other people's money to
7 try and make more money?

8 A. That's correct.

9 Q. What relationships generally did the Bank of Bermuda have
10 with these funds like Thema and Optimal and Kingate and the
11 ones you described?

12 A. They would have two or three different types of relation-
13 ships. They would be custodian, which means they would be
14 safekeeping those investments that those funds had made.

15 They could be what is called an administrator, which
16 is basically processing all of the transactions on behalf of
17 the fund. If an investor wanted to put his money into that
18 fund, they would send the money to the administrator, and then
19 the administrator would send it to wherever the fund was
20 investing at the time, and they would maintain all of the
21 records relating to who were the investors of that fund and
22 process the various transactions. In addition to that, they
23 would lend the money.

24 Q. Generally, talking about these funds, did you come to learn
25 what types of investors were involved in these funds?

1 A. The investigated range of investors in the funds that I
2 have mentioned, they would generally be individuals. There
3 would be a range of individuals from the very wealthy. But in
4 a fund like Thema, the structure of that fund was very similar
5 to a mutual fund in the U.S., which meant that the ordinary man
6 in the street could invest into that fund. So there would be
7 people who would just put small amounts of money as well as the
8 more wealthy that could put up much larger amounts of money.

9 Q. What I understand you to be describing is there was a range
10 from sort of ordinary folks that might invest in a mutual fund
11 all the way through the wealthy individuals.

12 A. Wealthy individuals, and even institutions as well, that's
13 correct.

14 Q. Now let me ask you this question. Why would a bank like
15 Bank of Bermuda or HSBC need to lend money to these investment
16 funds like Thema or Optimal?

17 A. The way that it works is an investor will give money to a
18 fund manager, who will then invest in various strategies. If
19 an investor wants to get his money out, it may be that he will
20 not want to wait for the place that that money has been
21 invested into to give that money back. So, a fund will have a
22 line of credit so that they can pay back their investors when
23 they are asked to rather than wait for the investments that
24 have been made to actually be sort of liquidated within the
25 market. It is a timing issue to make sure that the investors

1 get their money back when they expect to get their money back
2 rather than have to wait for underlying investments to be sold.

3 Q. When HSBC took over Bank of Bermuda, what sorts of things
4 did you look at with respect to these funds that had been doing
5 business with Bank of Bermuda? Let me pause. By business, I
6 think you said that they were giving them loans, that they had
7 some administrative responsibilities, and that they custodied
8 assets for them.

9 A. That's correct. In terms of looking at the loans, we would
10 go through looking at the sort of things that I mentioned
11 before: Who were the funds that we were lending to, what type
12 of investments those funds were making in the market, whether
13 that loan was secured by a security charge over those
14 investments, what the experience at Bank of Bermuda had been,
15 and what type of investors were involved.

16 Q. I want to step back for one second. Before you became
17 involved in looking at these Bank of Bermuda businesses, had
18 you been dealing with investment funds and hedge funds during
19 the course of your career?

20 A. I had been dealing with it for about ten years before I
21 started looking at the Bank of Bermuda.

22 Q. These funds, were they in the United States and all over
23 the world?

24 A. Global funds, that's correct.

25 Q. In the course of looking at these funds that were doing

1 business with the Bank of Bermuda, did you come to learn about
2 an entity called Bernard L. Madoff Investment Securities?

3 A. Yes, I did.

4 Q. Had you ever heard of Bernie Madoff before you came across
5 him in connection with reviewing these funds that were dealing
6 with Bank of Bermuda?

7 A. No, I had not.

8 Q. We are going to call that "Madoff Securities," by the way.
9 How did you come to learn about Madoff Securities in doing your
10 review of these funds that were doing business with the Bank of
11 Bermuda?

12 A. In a number of the credit review applications that were
13 submitted to me, there was reference to the Madoff strategy and
14 the fact that these funds were investing into that strategy.
15 Also that the overdraft line of credit was secured by a
16 security charge over the investments that were being made into
17 Madoff Securities.

18 Q. Stepping back for a minute, these funds like Optimal and
19 Thema, they had investors of their own, right?

20 A. Correct.

21 Q. Those funds, in turn, were investing some of that money
22 with Madoff Securities, is that fair?

23 A. That's correct.

24 Q. At the time Bank of Bermuda, later HSBC, would extend these
25 lines of credit to Thema and Optimal in case their investors

1 wanted to get in or out of the fund?

2 A. That's correct.

3 Q. Over the course of your review, did you gain an
4 understanding of where Madoff Securities was located?

5 A. My understanding is that they were located in New York.

6 Q. As you looked at them in connection with looking at these
7 funds from Bank of Bermuda, did you get an understanding of how
8 Madoff was performing its trading?

9 A. Yes, I did.

10 Q. What was that understanding that you got?

11 A. My understanding was essentially the money would come from
12 an investor, it would go to a fund like Thema fund, Thema would
13 invest in the Madoff strategy. Then, in funds like Thema, all
14 of that money would be put together in a big amount, would be
15 traded with Madoff Securities, the broker-dealer, and then that
16 broker-dealer would trade into the market to buy things like
17 equities on the S&P index. If the equities weren't doing well,
18 then they would potentially buy government securities.

19 Q. When you say "equities," are you referring to generally
20 stock?

21 A. General stock, yes.

22 Q. When we talk about government securities, would that be
23 like a U.S. Treasury bill?

24 A. U.S. Treasury, that's correct.

25 Q. As you performed the review of these funds, did you gain an

1 understanding of the custodial arrangement that Bank of Bermuda
2 had with Madoff Securities?

3 A. Yes, I did.

4 Q. Could you describe for the jury what that custodial
5 arrangement was.

6 A. Yes. Essentially, once the money had come from investors
7 to the fund like Thema, Bank of Bermuda was the custodian for a
8 fund like Thema, so it would know how much money had come from
9 all Thema's investors, it would know what money had been sent
10 to Madoff Securities. Then, once Madoff Securities had
11 undertaken all of the trading, it would notify back to Bank of
12 Bermuda those trades that had been made and how they had been
13 allocated across funds that Bank of Bermuda had been custodian
14 for. That would allow Bank of Bermuda to mark in its books and
15 records how much had been allocated to each fund.

16 For example, if Thema had \$100 invested and Optimal
17 had \$100 invested, it would expect Madoff Securities to notify
18 that they had bought \$100 worth of general stock and would
19 allocate that to each of those funds. Similarly, in the books
20 and records of Bernard Madoff, because he was taking all of
21 that money and putting it into the market in one big amount,
22 \$200 in the example I gave, he would have to maintain his books
23 and records to show that allocation of \$100 to each of those
24 funds. It is that books and records allocation which gives
25 legal certainty to people that they actually own those shares

1 that have been bought on their behalf.

2 Q. These books and records are just a way of keeping track of
3 who owns what?

4 A. It's a way of keeping track, but it is also the legal
5 document which proves who owns what.

6 Q. In terms of the assets that Madoff was investing in, what
7 was your understanding of who maintained custody of those
8 assets?

9 A. The first line of custody was Bank of Bermuda/HSBC, and
10 then Bernard Madoff maintained the records, which would have
11 tallied with the DTC.

12 Q. What is the DTC?

13 A. The DTC is Depository Trust Company, which is the
14 organization within the U.S. that maintains all of the records
15 relating to all general stock that can be sold, settled, and
16 cleared for U.S. general stock.

17 Q. It is your understanding that DTC is the place where all
18 stock, all United States securities are sort of kept track of
19 and custodied?

20 A. Except for U.S. government securities, that's correct.

21 Q. Except for like treasury bills?

22 A. Correct.

23 Q. But if we are talking about stock, if it is a U.S. stock,
24 it is going to be at DTC?

25 A. It's going to be at DTC.

1 Q. As part of this review, did you come to learn that there
2 was a subcustodial relationship between Bank of Bermuda and
3 Bernie Madoff?

4 A. Yes, I did.

5 Q. Can you describe for the jury what you discovered about
6 this subcustodial relationship.

7 A. As part of looking at the credit applications, I discovered
8 that the Bank of Bermuda had effectively allowed Bernard Madoff
9 Securities to do the custody of those underlying purchases for
10 the various stock, which was unusual because it seemed that the
11 funds themselves had asked for that to happen. Usually, what
12 would happen in something like an HSBC is we would have other
13 big banks doing that sort of custody for us.

14 The reason that is important is because we have to
15 make sure that the person looking after those investments is
16 fit and proper to do the job. At the end of the day, it's
17 someone else's money, so we are very careful about who we would
18 allow to look after those investments on behalf of any of our
19 clients.

20 Q. We are still at this time period when you are getting up to
21 speed on the relationships of the Bank of Bermuda and these
22 funds held by Bernie Madoff. At that time did you have an
23 understanding of how Bernie Madoff did the actual trading?

24 A. My understanding was that he would place all of the money
25 that came from the various funds in one amount and then Madoff

1 Securities would trade that in the market as one amount.

2 Q. Did you have an understanding that he would do that through
3 his --

4 A. Broker-dealer.

5 Q. The broker-dealer part of his business?

6 A. Right.

7 Q. After you conducted this initial review, did you have
8 concerns about the relationship as it then existed between Bank
9 of Bermuda, which HSBC had just bought, and Madoff Securities?

10 A. Yes, I did.

11 Q. Could you tell us what some of those concerns were.

12 A. My principal concern was that I had never heard of Bernie
13 Madoff. The way that we would do business would be to use, as
14 I said, one of these big banks to do the custody. I needed to
15 make sure that Bernie Madoff and Madoff Securities were a fit
16 and proper organization to look after my clients' money.

17 Q. What initial steps did you start to take to find out more
18 about Madoff Securities and understand this relationship?

19 A. The first thing that we did was to look at what public
20 information was available and to talk to our colleagues in New
21 York to see what they knew about Madoff Securities and Bernie
22 Madoff. Then I instructed the head of something called our
23 network management team, which looked after all of the
24 subcustodians that HSBC had, to undertake a visit to Bernie
25 Madoff, but before doing so to actually get as much as

1 information as we had within Bank of Bermuda offices to see
2 what investigations they had undertaken before agreeing to that
3 appointment.

4 Q. Who was the individual that you sent to go visit Madoff
5 Securities?

6 A. It was a gentleman called Brian Pettitt.

7 Q. You said that he worked, I think, in network --

8 A. Network management.

9 Q. Network management. That was network management for HSBC,
10 right?

11 A. That's correct.

12 Q. He wasn't a guy that had come over from Bank of Bermuda; he
13 is someone that had worked at HSBC prior to it being acquired?

14 A. That's correct.

15 Q. After you looked at the public record, talked to folks in
16 New York from HSBC, and sent Mr. Pettitt to speak with Madoff
17 Securities, did you continue to have concerns about the
18 relationship with Madoff Securities?

19 A. Yes, I did.

20 Q. At the time were you trying to examine whether or not to
21 continue extending credit to some of these funds that were also
22 investing in Madoff Securities?

23 A. Yes, I was.

24 Q. Was that credit, those lines of credit that were being
25 offered to these funds, was that secured in any way?

1 A. Yes. The lines of credit were all secured on the
2 underlying investments that were being made by Madoff.

3 Q. Stepping back for a minute, HSBC was looking at continuing
4 to loan money to these funds, right?

5 A. We were considering whether we should continue, that is
6 correct.

7 Q. Those loans that were being made to those funds needed to
8 be secured, meaning you had to go get the money, you needed to
9 make sure there were assets to back it up, right?

10 A. Yes, because if we couldn't get the money back from the
11 fund, then we would have to get it back from those underlying
12 securities.

13 Q. After your initial review of the relationship with Madoff
14 Securities, your understanding was that it was Bernie Madoff
15 and his business that actually held those securities?

16 MR. MEHLER: Objection to form.

17 THE COURT: Do you want to reformulate or consult?

18 (Counsel conferred.)

19 THE COURT: Please turn away from the jury and go into
20 the corner if you need to have discussion. Go to your right.

21 (Counsel conferred.)

22 Q. Was it your understanding that Bernie Madoff had custody of
23 the assets?

24 A. It was.

25 Q. If you needed to get money or collect on that loan, that's

1 where those assets that were securing it were located?

2 A. That's correct.

3 Q. Did you have any concerns about the nature of the
4 subcustodial relationship as well?

5 A. Yes, I did. I was very concerned that from the information
6 that had been given to me, essentially Bernie Madoff had
7 control of all the component parts. He would receive the money
8 from the funds. He would then have the decision as to what to
9 do with that money. He would also have control of the custody.
10 Further, he would have control through the broker-dealer of the
11 trading within the market. That was an uncomfortable position
12 for me because we would normally expect to see all of those
13 things done by different people.

14 Q. Having gathered those concerns, did you take any steps to
15 further look at Madoff Securities?

16 A. Yes, I did. I decided to engage a firm of external
17 accountants to do a more thorough review of his operation.

18 Q. Who were the accountants that you engaged?

19 A. I engaged KPMG.

20 Q. Could you describe to us generally what KPMG is.

21 A. Yes. There were a number of accounting firms who operate
22 globally, and KPMG were one of those organizations. They
23 operate in the U.S. as well as in Europe. I felt that they
24 would be suitable to undertake something which was covering
25 effectively a London and a U.S. operation.

1 Q. KPMG has offices all over the world, right?

2 A. Correct.

3 Q. What offices did you go to to engage?

4 A. I went to the London office because that is where I was
5 situated. I was directed to two individuals who had had
6 broader experience across the globe but also the comfort that
7 they had the contacts within New York as well.

8 Q. When you say contacts within New York, that they had folks
9 in New York that they could talk to?

10 A. That is correct.

11 Q. What were the names of the folks at KPMG that you were
12 directed to?

13 A. David Yim and David, I normally call him David L. I think
14 it is Luijerkink, L-U-I-J-E-R-I-N-K.

15 Q. Thank you for spelling that. We will continue to call him
16 David L. Is that fair?

17 A. Thank you.

18 Q. What was your understanding of Mr. Yim's background and
19 experience?

20 A. David Yim was recommended to me because he had experience
21 with doing internal control reviews of funds and custodians.
22 He had operated both in the UK and in Europe doing reviews
23 which technically are called a SAS 21 -- sorry SAS 70 or FAC
24 21, which is an internal control review of people like fund
25 managers and custodians. David L's experience, he was a

1 forensic accountant, which means that instead of just looking
2 at numbers, he would look at the whole control procedure to see
3 that it had integrity and was not fraudulent.

4 Q. Was Mr. Yim British?

5 A. He is British.

6 Q. Did you have a series of meetings with them after they were
7 engaged?

8 A. Yes, I did.

9 Q. In those meetings did you discuss your concerns about
10 Madoff Securities based on the review that you and Mr. Pettitt
11 had done?

12 A. Yes, I did.

13 Q. What concerns did you describe to Mr. Yim and David L?

14 A. My main concern was to make sure that the trades were real
15 and that the money that the investors were placing into Madoff
16 Securities was being used to make investments.

17 Q. Could you describe generally how that would look to your
18 mind.

19 A. Very simply, the cash comes in from the investor to someone
20 like a Thema. That money then goes into Madoff Securities.

21 What happens next? What I wanted them to do was to follow that
22 money trail through to see how it was put together with funds
23 from other funds, how it was then given to the broker-dealer,
24 what happened in terms of that broker-dealer going to the DTC
25 to buy the stocks, and what records of that trade were coming

1 back and being put in the books and records of Madoff, and then
2 what records were being sent back to HSBC, so that the whole
3 trade was followed through so I could be comfortable that it
4 was a real trade and it was going to the DTC, stocks were being
5 bought and were being allocated to my clients.

6 Q. Did you have discussions when you instructed them to take a
7 look at Madoff's books and records?

8 A. I was very specific with them, yes.

9 Q. Did you want them to look at how the DTC was involved?

10 A. I needed them to look at what records came back from the
11 DTC, that is correct.

12 Q. What was your understanding at this time as to whether or
13 not KPMG itself could go look at the actual DTC account?

14 A. My understanding was that unless you are a member of the
15 DTC, you cannot go to the DTC to get the records of anyone.

16 Neither HSBC nor KPMG are direct members of the DTC, so we were
17 wholly reliant on the records that we were able to get at
18 Bernie Madoff Securities to show that those trades were
19 actually happening.

20 Q. Did you instruct Mr. Yim and David L to look at the books
21 and records of Madoff Securities as best they could to make
22 sure that the stock was at DTC?

23 A. I did.

24 Q. About how many meetings did you have with these guys prior
25 to them embarking on their review?

1 A. We probably had about half a dozen physical meetings
2 between myself and them. In addition to that, Brian Pettitt
3 worked very closely with them to ensure that they had all of
4 the information that we had internally.

5 Q. Did you send them on their way to go to New York and look
6 at Madoff Securities?

7 A. I sent them on their way, yes, eventually.

8 Q. Were you aware of the time when they were in New York as it
9 was happening?

10 A. Yes, I was.

11 Q. Was there some communication back and forth between you and
12 the KPMG folks while they were at Madoff Securities?

13 A. There was, yes.

14 Q. That communication, what was it, generally?

15 A. There was two forms. There was email traffic directly to
16 me and there was also telephone calls.

17 Q. When did they go to visit Madoff Securities?

18 A. They were on-site on the 7th of November 2005.

19 Q. November of 2005?

20 A. Correct.

21 Q. They were based in London, so they would have to travel to
22 New York, was that your understanding?

23 A. That is correct.

24 Q. Do you have a sense of approximately how long they were at
25 Madoff Securities?

1 A. About three or four days.

2 Q. After they visited Madoff Securities, did you meet with
3 them again in London?

4 A. Yes, I did.

5 Q. Do you remember where you met? Did you meet at HSBC's
6 offices or did you go over to KPMG?

7 A. They came to my offices.

8 Q. Where in London are your offices located?

9 A. Canary Wharf.

10 Q. At that meeting did you ask them whether or not they
11 followed up on the instructions you gave them?

12 A. I did indeed.

13 Q. Could you tell us, at a high level, what they reported back
14 to you about what they found.

15 MR. MEHLER: Objection.

16 MR. FRISCH: Objection.

17 THE COURT: Please consult.

18 (Counsel conferred.)

19 MR. KRANTZ: Apologies, your Honor, but I think we
20 need a ruling.

21 THE COURT: Please sit quietly here while I consult
22 with counsel.

23 (Continued on next page)

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(In the robing room).

MR. KRANTZ: Your Honor, we were obviously at the point of your Honor's ruling yesterday. I think there is a little lack of clarity as to how far exactly Mr. Zach can go or not go here. We suggested that he ask a leading question at this point: Did they report back to you that they followed a trade through from beginning to end? yes; and were you satisfied with that? yes. A suggestion along those lines. I think Mr. Zach wants to do it more open-ended. I'll leave it to him.

MR. ZACH: Sorry we're back here. I understood the Court's ruling to ask to have her give a high-level response to what they said, so I asked that very question. At the side bar they want to make it leading, they want to make it narrow. They are trying to sort of force their own questions on the witness, which they can ask on cross-examination.

I thought my question was perfectly appropriate. That's why I, frankly, wasn't giving in to their suggestions. I asked her to give us a high-level overview, and I think she was going to give that to us. I think the question is appropriate and what the Court instructed us yesterday.

MR. KRANTZ: The problem is that we have no control over the answer. We don't know if the answer is going to comport with your Honor's rulings.

MR. MEHLER: I don't recall, having read the

1 transcript, that the word high-level was in it.

2 THE COURT: Conceptually I did suggest to Mr. Zach
3 that I expected he would keep any discussion of the reporting
4 back to a high conceptual level. Do you expect that Ms. Coe,
5 Brit that she is, will understand the nomenclature there and
6 respond to the request for high level with an overview type
7 response?

8 MR. ZACH: I think so. I said to this them at the
9 side bar, your Honor. When we went back early yesterday, I met
10 with Ms. Coe, saying I'll see you tomorrow. One of the issues
11 that came up was this issue of how they reported back. I said,
12 I'm going to ask you to give a very high level general answer
13 of what they told you back. So I think she can answer the
14 question intelligently.

15 MR. MEHLER: What is her answer going to be? Mr. Zach
16 prepared her.

17 MR. ZACH: I don't tell her what the answer is going
18 to be, Mr. Mehler.

19 MR. MEHLER: But you heard it.

20 MR. RIOPELLE: Your Honor, I have the transcript in my
21 hand, and I'm reading the direction that your Honor gave us
22 yesterday. It seems to me this whole issue can be solved with
23 a simple leading question, which is: Ms. Coe, did you
24 understand, based on your discussions with Mr. Kim and David L,
25 that KPMG had carried out your instructions? Answer, yes. I

1 think that should be her answer. Based on that, what did you
2 do?

3 That's what your Honor said the government should do.
4 I think that is the safest way to do it, with that leading
5 question. It avoids the possibility of her giving details as
6 to what the report to her was that KPMG had done, which is the
7 place where we are uncomfortable and feel our ox would be
8 gored. With that leading question, I think Mr. Zach will get
9 what he needs. He has gotten in the record what the
10 instructions were already.

11 THE COURT: That would certainly avoid completely the
12 sorts of problems that the defense were concerned about
13 yesterday. May I see the transcript.

14 MR. RIOPELLE: Sure.

15 THE COURT: I said that getting that sort of high-
16 level, general answer is something that I will permit. But I
17 also said, on the request of the defense, I will give an
18 instruction that any testimony that does come out that KPMG
19 said that it did a proper audit isn't offered for the truth and
20 is not probative of the propriety of the audit.

21 I will give that instruction if necessary. That
22 indicated and was meant to indicate that I was not limiting the
23 government to strictly "did you understand that they did what
24 you told them to do? yes." The government may make an inquiry
25 that invites a general overview.

1 My hope and expectation is that that general overview
2 is they said they went to New York, they followed the paper
3 trail, they looked for this, they saw books and records, and
4 everything looked fine. To the extent the response starts to
5 go into deep, deep detail of someone told me about a
6 conversation, I am asking Mr. Zach to cut the witness off. If
7 the defense, after that testimony is elicited, feels that it is
8 too much of rah-rah KPMG did exactly the right thing, we will
9 talk about an instruction.

10 MR. MEHLER: Your Honor, Mr. Zach is going to
11 specifically ask about DTC, which will involve what Mr. Yim,
12 who is not here, saw and did and his conversations with Frank
13 DiPascali. This is not going to be a high-level generality.
14 It is going to be a specific.

15 THE COURT: Mr. Zach is shaking his head side to side.

16 MR. ZACH: My question was not what did you generally
17 do. You objected to that question. She is going to give an
18 overview. She is not going to get into certainly any
19 conversations that she heard or reported back to her like David
20 Yim talked to Frank DiPascali. I don't expect any of that to
21 come in, because she never said anything like that when I met
22 with her. I think it is going to be of the nature of the
23 answer that you sort of described in what you are hoping to
24 get.

25 MS. LUM: I have an objection to the form of the

1 question. While we understand what "high-level" means, I think
2 perhaps the witness and the jury is going to understand to it
3 mean something else. Could you perhaps say "an overview" or
4 "general" instead of using the word "high-level"? I think that
5 is ambiguous.

6 THE COURT: Ask her a high-level overview.

7 MR. KRANTZ: Your Honor, to save having to come back
8 on the instruction, I would ask that the instruction be that it
9 is not coming in for the truth of what KPMG actually did at the
10 time, because that is the hearsay component. It is being
11 offered -- I'm not sure how to say what it is being offered
12 for -- to explain what she did next.

13 MR. ZACH: I can do that part of it. You don't want
14 the hearsay part of it. It is being offered for the witness's
15 understanding of what KPMG did.

16 MR. KRANTZ: That's fine. No problem with that.

17 MR. ZACH: And how she subsequently acted.

18 MR. KRANTZ: That's fine.

19 MR. BRESLIN: The impact on her.

20 MR. ZACH: And its impact on her.

21 MR. KRANTZ: That's fine.

22 THE COURT: Something to the effect of Ms. Coe's
23 testimony regarding KPMG is offered as evidence of Ms. Coe's
24 understanding of what KPMG did and what action was taken by
25 HSBC, not as evidence of what KPMG actually did?

1 MR. KRANTZ: That is satisfactory.

2 MR. MEHLER: Yes.

3 MR. ZACH: That is totally fine. Just so we don't
4 have to come back again, obviously there is KPMG 2. I'm going
5 to ask the same question as rephrased here. I am just raising
6 that so we don't have another later.

7 MR. KRANTZ: We would ask for the same instruction
8 when we get to 2008. Are you referring to the 2008 KPMG audit?

9 MR. ZACH: Yes.

10 MR. KRANTZ: It's the same issue.

11 THE COURT: I don't want to jump in with it too early.
12 When you get to the end of that phase, would you turn to me and
13 say this is an appropriate time for the instruction.

14 MR. ZACH: Sure. Thank you, your Honor.

15 THE COURT: Thank you.

16 (Continued on next page)

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(In open court)

BY MR. ZACH:

Q. Ms. Coe, when you had the meeting with KPMG in London after the visit to Madoff Securities in New York, could you please give us a high-level overview about what they reported back to you about what had happened.

A. They reported back that they had followed through a number of trades from the money that was being sent from the firms through to Bernie Madoff, through to the records that they saw, which confirmed the trades had gone from Madoff Securities to the DTC and those stocks had been purchased and were allocated to the various fund clients.

Q. After you heard that, how did you react to that?

A. It gave me complete reassurance.

MR. ZACH: Your Honor, this is probably an appropriate time for the instruction.

THE COURT: Ladies and gentlemen, Ms. Coe's testimony regarding KPMG is offered as evidence of Ms. Coe's understanding of what KPMG did and what action was taken by HSBC, not as evidence of what KPMG actually did.

MR. ZACH: Thank you, your Honor.

BY MR. ZACH:

Q. After you got that report back, what decisions did HSBC make in terms of continuing to extend credit to some of these funds that were themselves investing with Madoff Securities?

1 A. We agreed to continue to lend them money.

2 Q. At this point did you have any expectation of revisiting
3 Madoff Securities down the road to keep track of the
4 relationship it had with these funds that HSBC was lending
5 money to?

6 A. Yes, I did.

7 Q. That was in that first KPMG visit was in November 2005,
8 right?

9 A. That's correct.

10 Q. Were these meetings right after that or were they in 2006?

11 A. The initial meeting when they came back was in November
12 2005. I allowed for the credit lines to be continued before
13 the end of November 2005. But we continued to have meetings to
14 look at how we could improve things like the documentation and
15 the controls throughout early 2006.

16 Q. I want to fast-forward a little bit, Ms. Coe, into 2008.

17 A. OK.

18 Q. What did the financial world look like in 2008?

19 A. The financial world was starting to implode in 2008. The
20 general global availability of cash, of liquidity, was starting
21 to dry up. This was affecting a number of organizations. It
22 was quite evident that there were cash pressures and cash flow
23 pressures on many of these organizations which potentially
24 could cause them to do things which in ordinary market
25 conditions they wouldn't do.

1 Q. In 2008 were you still involved in risk management?

2 A. Yes, I was.

3 Q. As a risk manager, did the financial turmoil signal more or
4 less work for you?

5 A. Much more work.

6 Q. As part of that, what sorts of reexaminations of HSBC
7 business did you embark upon?

8 A. There was a complete review of all credit lines. And that
9 wasn't just about taking lines away. It was also about trying
10 to help people to survive, which meant potentially it could
11 mean lending more money. But that was having to happen across
12 a range of financial organizations, particularly broker-
13 dealers, who were exceptionally vulnerable to changes in the
14 way cash moved around the world.

15 Q. Why were broker-dealers more vulnerable to that?

16 A. They were more vulnerable because of the way they generate
17 cash and liquidity and use other people's assets to do that.
18 That means they are potentially more vulnerable to any change
19 or to any bank wanting more security than they were used to
20 giving.

21 Q. Stepping back to 2005 briefly, at that time what was your
22 understanding of the amount of investments that the funds doing
23 business with both HSBC and Madoff Securities had with Madoff
24 Securities?

25 A. In early 2005 the amount of money which had been invested

1 into Madoff by funds that were now HSBC clients was about
2 \$3 billion.

3 Q. As we step forward in 2008, had that amount gone up or
4 down?

5 A. It had gone up significantly.

6 Q. When we hit 2008 and there is this sort of financial
7 problem, HSBC's clients have even more money with Madoff
8 Securities?

9 A. That's correct.

10 Q. During this reexamination of various lines of credit in
11 2008, did your attention turn to Madoff Securities again?

12 A. It turned to Madoff Securities and a number of others.

13 Q. What were your specific concerns about Madoff Securities in
14 2008?

15 A. Because of the way that cash was no longer as freely
16 available as it had been, I was concerned that he may be
17 tempted to use the money to do other things in the event that
18 many of the funds asked for their money back. I needed to make
19 sure that I could protect my clients and their investors from
20 money which they had given to Madoff for one purpose being used
21 for another purpose.

22 Q. What steps did you take in 2008 to again address these
23 concerns that were popping up in your mind?

24 A. I had already asked KPMG to do a second review. It is not
25 that we didn't do anything between 2005 and 2008. There were

1 the regular contacts with Madoff Securities. Brian Pettitt did
2 a further on-site review. But I asked KPMG at the end of 2007
3 to do another visit to make sure that the trades were being
4 placed into the DTC as I had expected.

5 Q. Did you go back to the same folks at KPMG had done that
6 audit and review back in 2005?

7 A. I did.

8 Q. This is Mr. Yim and David L?

9 A. That is correct.

10 Q. Did you meet with them before sending them off to New York?

11 A. Yes, I did.

12 Q. In those meetings did you again give them instructions
13 about what you wanted them to do?

14 A. Yes, I did.

15 Q. To be clear, you had to pay KPMG to do this, right?

16 A. Yes.

17 Q. How much did KPMG charge, roughly?

18 A. Roughly about \$150,000.

19 Q. In 2008 what did you tell Mr. Yim and David L that you
20 wanted them to look at in Madoff Securities?

21 A. I told them exactly the same as I told them in 2005: To
22 follow the cash through to the DTC and get as much documentary
23 evidence as they could to ensure that those trades were real.

24 Q. Did you send them off to New York again?

25 A. I sent them off to New York again.

1 Q. At this time were you in communication with them while they
2 were at Madoff Securities?

3 A. Yes. They were there for a longer period of time, and
4 David L contacted me on a number of occasions by telephone.

5 Q. When they came back to London, did you again sit down and
6 meet with them?

7 A. Yes, I did.

8 Q. Again, we want to get your understanding of what was done.
9 I'm going to ask you, can you give us a high-level overview of
10 what KPMG reported back to you after the second review.

11 A. Yes. They reported back that they had followed a number of
12 trades which was cash coming in from the funds that were at
13 HSBC clients, they had followed those through to be put
14 together with other money into Madoff Securities and to the
15 DTC, and the records from the DTC were examined back to the
16 books and records that were kept by Madoff as custodian for
17 those trades allocated to HSBC's clients.

18 MR. ZACH: This is a good time, your Honor.

19 THE COURT: Ladies and gentlemen, once again, this
20 testimony regarding what KPMG said it did is offered in
21 connection with Ms. Coe's understanding of what KPMG did and
22 what action was taken by HSBC based on that information. It is
23 not evidence of what KPMG actually did.

24 MR. ZACH: Thank you, your Honor.

25 Q. Ms. Coe, how did you react to getting this information back

1 from KPMG?

2 A. I was once again comforted by what they had told me.

3 Q. When, approximately, in 2008 did this happen?

4 A. Their on-site visit was April 2008, so we had the meeting
5 late April-early May 2008.

6 Q. How did the rest of 2008, between April and let's say
7 November, play out in terms of the financial world?

8 A. Things started to heat up very quickly from that point
9 onwards. My position within the bank meant that I had access
10 to a lot of information about a lot of clients and about a lot
11 of what was going on in the financial markets at that time. It
12 was very clear that the concerns about cash and people's access
13 to cash was getting more intense and more difficult.

14 Therefore, we were needing to take a lot of more
15 control steps to make sure that that cash was not being used by
16 many customers for purposes which it was not originally
17 intended. Madoff, amongst other parties that we were dealing
18 with, became subject to a higher level of scrutiny and a
19 requirement for more intense controls.

20 Q. When you say more intense controls, you're saying those are
21 controls that HSBC was going to impose on its customers in
22 their dealings with Madoff Securities?

23 A. That is correct.

24 Q. As things got worse in 2008, what sorts of new controls did
25 you want to impose on that relationship between HSBC's clients

1 and Madoff Securities?

2 A. I wanted to ensure that my clients' cash was kept away from
3 other clients of Madoff's cash was not able to be used for any
4 other purpose. I was looking for a way of having that kept
5 separate, and not only within Madoff's accounts but also at the
6 DTC.

7 Q. Did you convey these instructions to Madoff Securities?

8 A. Brian Pettitt went to see Bernie Madoff on my behalf to
9 instruct him that this was the only basis on which we would be
10 able to continue to deal with clients who wished to invest
11 within Madoff.

12 Q. When approximately did you have Mr. Pettitt go visit Mr.
13 Madoff?

14 A. Approximately October 2008.

15 Q. Were these new controls ever put in place?

16 A. They were never put in place.

17 Q. What happened?

18 A. Madoff was arrested for fraud.

19 Q. When did you learn that Mr. Madoff was arrested?

20 A. On the morning of the 12th of December 2008.

21 Q. Where were you?

22 A. I was actually in bed at home. I had just gone on core
23 leave.

24 Q. What is that again?

25 A. Within a financial organization you have to have two weeks'

1 leave when you are away from the office. It's mandatory. I
2 had just taken my leave.

3 Q. You had just started your leave and you were in bed and you
4 learned what?

5 A. That Madoff had been arrested.

6 Q. How did you react?

7 A. I was shocked, and then I went to work.

8 MR. ZACH: Thank you, Ms. Coe. No further questions.

9 THE COURT: Thank you.

10 Mr. Frisch.

11 MR. FRISCH: Thank you, your Honor.

12 Ladies and gentlemen, good morning.

13 CROSS-EXAMINATION

14 BY MR. FRISCH:

15 Q. Ms. Coe, Good morning.

16 A. Good morning.

17 THE COURT: Please speak up, Mr. Frisch.

18 MR. FRISCH: I will.

19 THE COURT: Thank you.

20 Q. Ms. Coe, my name is Andy Frisch. I represent one of the
21 defendants in this case, whose name is Dan Bonventre. We are
22 speaking right now for the first time, is that correct?

23 A. That is correct.

24 Q. Are you familiar with things called MLATs, that is, mutual
25 legal assistance treaties, between various countries so that

1 someone from one country can come testify at a trial in another
2 country? Are you familiar with such a thing?

3 A. No, I am not.

4 Q. Are you here pursuant to any kind of formal request made by
5 the prosecutors in this case to the government of your country?

6 A. I'm not aware of that, no.

7 Q. You are here simply because the prosecutors asked you to be
8 here, is that right?

9 A. That is correct.

10 Q. Is it your understanding, though, that even United States
11 prosecutors cannot compel a citizen of another country to
12 testify at an American trial, they have to go through channels?

13 MR. ZACH: Objection.

14 THE COURT: Please consult.

15 (Counsel conferred.)

16 Q. Let me ask you the question this way. Is it your
17 understanding that your testimony here cannot be compelled
18 unless the United States prosecutors go through proper
19 channels?

20 A. I wouldn't expect so.

21 Q. In any event, you are here voluntarily?

22 A. Absolutely.

23 Q. As I understand it, you became aware of Madoff Securities
24 for the first time after HSBC acquired or merged with the Bank
25 of Bermuda, is that right?

1 A. That's correct.

2 Q. Bank of Bermuda had clients, including one of them called
3 the Thema Fund, that had investments with Madoff Securities, is
4 that right?

5 A. That is correct.

6 (Continued on next page)

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1 Q. And Thema, is T-h-e-m-a; is that right?

2 A. That is correct.

3 Q. And at some point, the Thema Fund was applying for a loan
4 for which HSBC would ultimately be the lender, correct?

5 A. Correct.

6 Q. And the purported collateral were assets in the purported
7 custody of Mr. Madoff; is that right?

8 A. That's correct.

9 Q. And, in substance, you wanted to make sure that the
10 collateral would be there in case the Thema Fund, for example,
11 failed to repay the loan or defaulted, as we say; is that
12 right?

13 A. Yes.

14 Q. Now, am I correct that one of the things that principally
15 concerned you about Madoff Securities was that he had
16 end-to-end control of everything relevant to this collateral;
17 is that so?

18 A. Yes.

19 Q. In the United States, I don't know if you use this term in
20 the United Kingdom, but he was a sole proprietor. Do you know
21 what I mean by that?

22 A. I know what you mean by that, yes.

23 Q. That's a term for which you have an equivalent in the
24 United Kingdom, I assume?

25 A. Yes, we do.

1 Q. But in any event, you understood he was the guy in control?

2 A. Yes.

3 Q. It was his business?

4 A. It was his business.

5 Q. Unlike other corporate entities, there were no

6 shareholders, right?

7 A. As far as the activity for securities, yes, but as far as

8 the broker-dealer is concerned, my understanding is that was a

9 corporation.

10 Q. As far as? I missed your answer.

11 A. The broker-dealer was concerned.

12 Q. Oh, I see, a broker-dealer.

13 A. Was concerned.

14 THE COURT: Ms. Coe, would you just bring the

15 microphone a little closer to you?

16 THE WITNESS: I'm sorry.

17 THE COURT: Thank you.

18 BY MR. FRISCH:

19 Q. If you know, do you know whether or not Madoff Securities

20 had a board of directors, either any part of Madoff Securities,

21 if you know?

22 A. My recollection is that it did.

23 Q. You believe that it did?

24 A. In the matter of securities.

25 Q. In any event, you know that Mr. Madoff controlled any

1 instructions regarding this collateral, correct?

2 A. Yes.

3 Q. He controlled any deliveries regarding this collateral,
4 right?

5 A. He controlled the investment strategy.

6 Q. And certainly, the disposition of the collateral he would
7 also control, correct?

8 And let me ask the question a better way. He
9 controlled what HSBC would get if Thema defaulted subject to
10 his agreement with you, correct?

11 A. He would control the processes that were underpinning that,
12 yes.

13 Q. All right. Now, am I correct that the directors of the
14 Thema Fund included two brothers named Alberto and Stefan
15 Benbassat; is that right?

16 A. Yes, it is.

17 Q. And that's B-e-n-b-a-s-s-e-t?

18 A. It may be a-t at the end. I can't recall.

19 Q. And there came a time when you had lunch with these two
20 brothers; is that correct?

21 A. I had lunch with one of them.

22 Q. And were they, themselves, high-net-worth investors, or did
23 they simply help manage the Thema Fund for other investors?

24 A. They were the principals behind the Thema Fund.

25 Q. So they were, themselves, the high-net-worth individuals?

1 A. I had no cause to know what their personal net worth was.

2 Q. Were they the investors themselves? That's my point. Were
3 they the investors or the managers?

4 A. They were the managers.

5 Q. Got it. And so they were involved in making or
6 recommending the investment decisions with regard to Madoff
7 Securities on behalf of the Thema Fund; is that right?

8 A. They were responsible for making the investment decisions
9 of the Thema Fund, yes.

10 Q. Okay. And one of the investments of the Thema Fund was
11 Madoff Securities --

12 A. That's correct.

13 Q. -- correct? And fair to say your meeting with this one
14 brother was uneventful?

15 A. Completely.

16 Q. Certainly nothing about it gave you what we call a red
17 flag, correct?

18 A. Not at all.

19 Q. Now, one of the ways that HSBC sought to address its
20 concerns was through an HSBC employee, whose name you've
21 mentioned, Brian Pettitt; is that correct?

22 A. That's correct.

23 Q. And he met with Mr. Madoff in New York on at least one
24 occasion; is that right?

25 A. That's correct.

1 Q. And then in the fall of 2005, HSBC decided to engage KPMG
2 to conduct a review of Madoff Securities; is that right?

3 A. In early 2005. I actually sent them over in late 2005.

4 Q. You made the decision much earlier than late 2005 --

5 A. That is correct.

6 Q. -- when they went over?

7 A. Correct.

8 Q. Now, HSBC had no particular reason to believe that anything
9 was wrong at Madoff Securities, it was simply appropriate for
10 Madoff to be reviewed under the circumstances about which
11 you've testified; is that right?

12 A. As risk manager, I had concerns that I wanted to be fully
13 investigated.

14 Q. Not because you had any particular reason to believe
15 anything was going on wrong at Madoff Securities, but based on
16 the kind of appropriate concerns you would have, given your
17 responsibilities at HSBC?

18 A. I had no evidence that anything was going wrong. What I
19 wanted to do was to make sure that it was as had been reported.

20 Q. Understood. Now, before the KPMG review of Madoff
21 Securities, you learned that Mr. Madoff was reluctant to allow
22 HSBC to come in and review Madoff Securities directly because
23 Mr. Madoff reportedly wanted to protect the integrity of his
24 so-called black box technology; is that correct?

25 A. That's what I was told, yes.

1 Q. And what is black box technology, if you know?

2 A. It is essentially a mathematical formula which is
3 proprietary to either an individual or a number of individuals
4 which makes investment choices through the mathematical
5 formula.

6 Q. So it's a term of art in the industry; it's nothing
7 peculiar to Madoff Securities, right?

8 A. It's nothing peculiar to Madoff Securities, no.

9 Q. It's basically sort of use of a computerized model to make
10 trades quickly based on market activity; is that a fair way of
11 describing it?

12 A. It's to make trades, the speed of which would be one of the
13 components.

14 Q. And the idea is if you can use computers and make it
15 quickly, you have a better chance of profitability; at least
16 that's the goal?

17 A. The art would be to optimize when you buy and when you
18 sell.

19 Q. For the purpose of profitability?

20 A. Correct.

21 Q. Now, your understanding was that Mr. Madoff didn't want the
22 purported secrets of his investment strategy to become widely
23 known; is that right?

24 A. That is correct.

25 Q. And that, to you, at the time, wasn't unusual?

1 A. It was not unusual for the number of funds that I had
2 experience of.

3 Q. That's something that was somewhat common, to some extent,
4 with regard to investment strategies of fund managers; is that
5 right?

6 A. Of fund managers that use that type of investment strategy.

7 Q. When you say investment strategy, are you referring now to
8 the so-called black box technology?

9 A. Yes, I am.

10 Q. Now, before the KPMG review of Madoff Securities, you
11 learned that Mr. Madoff himself did not use e-mail; is that
12 right?

13 A. I did.

14 Q. And you thought that was quirky but not necessarily
15 strange, correct?

16 A. I thought it was strange.

17 Q. Well, give me one moment. Ms. Coe, do you recall
18 testifying at a deposition on May 19th, 2011, that took place
19 in Germany?

20 A. Yes, I do.

21 Q. And do you recall testifying at that deposition, upon being
22 asked that Mr. Madoff himself did not use e-mail, that you
23 thought it was quirky but not necessarily strange?

24 A. I don't remember those exact words, but I do get your
25 point. There isn't a lot of difference, in my language, to the

1 two.

2 Q. Okay.

3 A. Let's say odd. I thought it was odd.

4 Q. Okay. Fair enough. Before the KPMG review of Madoff
5 Securities, you also learned that Mr. Madoff did not send
6 customers electronic trade confirmations; is that right?

7 A. That is correct.

8 Q. And that was not unusual to you?

9 A. That was not unusual in the type of funds that were being
10 investing into Madoff, correct.

11 Q. Okay. You also learned that in the event that Thema failed
12 to repay the loan, Mr. Madoff wanted to pay cash to HSBC rather
13 than give you the actual collateral that underlaid the loan; is
14 that so?

15 A. That was written in one of the credit applications, yes.

16 Q. And that also, under the circumstances, was not unusual to
17 you, correct?

18 A. It was not something I would have objected to.

19 Q. Well, the reason you didn't object -- the reason you would
20 not have objected to it is because you understood, as I believe
21 you testified on direct examination, that Mr. Madoff made
22 investments for a lot of investors at once, correct?

23 A. That is correct.

24 Q. And you understood that if he had to pay back HSBC, he
25 would not want to break up his total investments on behalf of

1 clients, of which the Thema Fund was just one --

2 A. That's correct.

3 Q. -- is that fair? I'm sorry. We were speaking over each
4 other.

5 A. I'm sorry. Yes, that's correct.

6 Q. So your understanding was that Mr. Madoff wanted to pay
7 cash to HSBC in the event of a default because that way he'd be
8 protecting the investments of other investors, correct?

9 A. That's correct.

10 Q. Now, has HSBC done business with KPMG on matters other than
11 Madoff Securities?

12 A. KPMG are HSBC's or were HSBC's auditors and do a lot of
13 consultancy work for HSBC.

14 Q. And I think you testified on direct that KPMG is one of the
15 biggest accounting firms in the world, correct?

16 A. That's correct.

17 Q. And I think now, or in the recent past, they've been one of
18 the Big Four accounting firms in the world; is that so?

19 A. Yes.

20 Q. And they've been around, in one form or another, since the
21 1800s, if you know?

22 A. I don't know whether it's the 1800s, but certainly a long
23 time.

24 Q. Now, one of the KPMG executives who was actually in charge
25 of this review was a man named David Yim, and that's Y-i-m; is

1 that correct?

2 A. Yes.

3 Q. And had you had occasion to deal with -- withdrawn.

4 Have you had occasion to deal with Mr. Yim other than
5 in connection with Madoff Securities?

6 A. Not before he -- before Madoff Securities, no.

7 Q. You know that he's been with KPMG for many years, correct?

8 A. A number of years, yes.

9 Q. And I think you testified that one of his specialties or
10 areas of expertise is internal controls and assessing
11 operational risk; is that so?

12 A. Yes, that's correct.

13 Q. And your understanding was that he's well versed or was
14 well versed at the time in things like corporate governance and
15 internal controls; is that correct?

16 A. That was the credentials that were given to me, yes.

17 Q. Now, am I correct that the offices of HSBC and KPMG in
18 London are very close to one another? Is that so?

19 A. They are now, yes.

20 Q. HSBC is, I think, at 8 Canada Square in Canary Wharf; is
21 that correct?

22 A. Yes.

23 Q. And currently, KPMG is at 15 Canada Square?

24 A. I don't know the exact -- it's the opposite side of the
25 road.

1 Q. So how long would it take for someone to walk from HSBC to
2 KPMG in London?
3 A. Not long.
4 Q. Basically across the street?
5 A. Yes.
6 Q. Another of the KPMG executives who worked on the Madoff
7 Securities review was the man we're calling David L, correct?
8 A. Correct.
9 Q. I think it's Luijernick or Lujering?
10 A. I think it turns into a B for pronunciation, but I can't be
11 absolutely certain.
12 Q. The J becomes a B. All right. Am I correct that he now
13 works for KPMG in Sidney, Australia; if you know?
14 A. I don't know.
15 Q. Do you know that he is Australian, that his heritage is
16 Australian?
17 A. My understanding is that he is, yes.
18 Q. But at the time, of course, in 2005, he was working with
19 KPMG in London; is that correct?
20 A. I believe he was at the London office, yes.
21 Q. Are you aware that Mr. -- that David L is the author of a
22 book entitled Corporate and Financial Fraud?
23 A. No.
24 Q. Before he worked for KPMG, are you aware that he worked for
25 Australian law enforcement, investigating fraud?

1 A. No, but he came to me as a forensic expert.

2 Q. You came to know him as a forensic expert, is that what you
3 said?

4 A. That's what KPMG recommended as part of his credentials
5 when they recommended him.

6 Q. I see. Thank you. Now, Mr. Madoff's firm was supposedly
7 the custodian of the assets of the collateral for the Thema
8 Fund loan; is that right?

9 A. That is correct.

10 Q. And you mentioned something on your direct called the DTC,
11 correct?

12 A. Yes.

13 Q. And one of the reasons why HSBC wanted to do this review
14 was because HSBC did not have the means to contact DTC itself
15 and confirm whether DTC held the collateral; is that correct?

16 A. That is correct.

17 Q. In fact, neither HSBC nor KPMG were members of DTC,
18 correct?

19 A. Correct.

20 Q. And so neither one of them had the power to get information
21 from DTC, as would, for example, a member of the Securities and
22 Exchange Commission in the United States; is that correct?

23 A. That's correct.

24 Q. You testified on direct examination that an investment fund
25 can have an interest in borrowing money even though the fund

1 has assets under management, correct?

2 A. Could you repeat that again --

3 Q. Sure.

4 A. -- to make sure that it's technically correct? I'm sorry.

5 Q. That's okay. You testified on direct that an investment
6 fund may have an interest in borrowing money even though the
7 fund has assets under management, correct?

8 A. Yes, that's correct.

9 Q. And I think you described it as something of a timing
10 issue?

11 A. That can be one of the reasons, which it was in this case.

12 Q. And by a timing issue, one of the ways a timing issue can
13 come up is that a fund may have a need to pay back investors a
14 certain amount of money, but they don't want to interfere with
15 their strategy, and so the best thing to do is just to borrow
16 money; is that fair?

17 A. It can be one of the reasons, yes.

18 Q. There could be other reasons why -- well, withdrawn.

19 At least under that circumstance, it makes sense for a
20 fund to borrow money to pay clients even though the fund has
21 assets under management; would you agree with that?

22 A. Yes.

23 Q. Okay. Now, in the fall of 2005, so this would be after you
24 decided to do the review but before it happened, one of your
25 colleagues at HSBC involved in this matter was a man named Paul

1 Smith; is that right?

2 A. Yes.

3 Q. And what was his role in 2005 regarding this project,
4 regarding Mr. Madoff?

5 A. Paul Smith was a Bank of Bermuda senior manager that joined
6 HSBC when we bought Bank of Bermuda. He was the head of the
7 business division that managed all of those fund clients that
8 were previously Bank of Bermuda clients.

9 Q. Now, I think you testified that KPMG review of Madoff
10 Securities took place beginning on November 7th, 2005; is that
11 right?

12 A. I think they were physically in the offices on that day.
13 The review started much before that; so they could do all of
14 their preliminary work.

15 Q. Understood and what I should have asked is the on-site part
16 of the review of Madoff Securities took place on or began on
17 November 7th of 2005; is that --

18 A. I believe it was 7th of November.

19 Q. And the on-site part of the review, that is when they were
20 actually there, lasted in the neighborhood of three or four
21 business days; is that right?

22 A. That is my understanding, yes.

23 Q. Now, do you know who chose the date for the review?

24 A. I think the date was mutually agreed between the Davids and
25 Bernie Madoff.

1 Q. They negotiated that the date would be November 7th?

2 A. I don't think it was so much of a negotiation. More of a,
3 we need to fly over at a particular time. We need to come to
4 your offices.

5 Q. But certainly this wasn't a surprise visit or a spot visit,
6 correct?

7 A. It wasn't a visit where we just turned up on the doorstep,
8 no.

9 Q. Okay. Now, I want to show you a two-page letter that I've
10 marked for identification as DB55, and I want to start by
11 apologizing. The only copy that I have has a lot of
12 handwriting on it. I'm not going to ask you anything about the
13 handwriting. I'm going to ask you questions about the text.

14 MR. FRISCH: May I distribute it, Judge?

15 THE COURT: Yes, if you just show it to the
16 government.

17 MR. FRISCH: Of course. I have multiple copies.

18 THE COURT: Thank you.

19 Q. Now, Ms. Coe, you're free to look at the entire thing.
20 It's not a long letter, but I'm going to direct -- my questions
21 are going to be about the second page, but I don't mean to rush
22 you. Take your time.

23 Is this letter on HSBC letterhead?

24 A. It is, yes.

25 Q. And do you see your name on the second page?

1 A. I do, yes.

2 Q. And this was a letter that was authored by Mr. Smith, about
3 who you just testified, to Mr. Madoff in advance of the
4 November 7th visit?

5 A. It would appear to be that, yes.

6 Q. As far as you know, was this letter written at about the
7 date indicated, October 17th, 2005?

8 A. I've never seen this letter before; so I don't know when it
9 was written.

10 Q. Does it appear to be a letter that was maintained by HSBC
11 in HSBC's files?

12 MR. ZACH: Objection.

13 MR. FRISCH: Let me confer with Mr. Zach, if I could.

14 THE COURT: Would you, please.

15 (Counsel conferring)

16 MR. ZACH: Resolved, your Honor.

17 THE COURT: Thank you.

18 BY MR. FRISCH:

19 Q. Ms. Coe, let me ask you this question. Was it your
20 understanding that Mr. Smith -- withdrawn.

21 Was it your understanding that the review for
22 November 7th could have been rescheduled if it was inconvenient
23 for anyone?

24 A. That's not my understanding.

25 Q. Your understanding that it was on November 7th and that was

1 it, it couldn't be moved; is that correct?

2 A. That is my understanding.

3 Q. And what's that understanding based on?

4 A. I was very specific to the two Davids that I wanted them to
5 go no later than very early in November because we had had a
6 considerable delay in actually organizing the review, and I had
7 withdrawn lines of credit for a number of clients which I was
8 not prepared to put in place. And I knew that that would
9 potentially be damaging to investors and as well as my
10 obligations to the organization. I also had obligations to
11 those investors.

12 So I was quite determined that that review should not
13 be delayed. So there may have been an illusion that it was
14 moveable, but the reality was I was quite determined that that
15 should happen at that date. And I had arranged for Brian
16 Pettitt to be in New York that week, as well; so he would be
17 available to answer questions for -- from the two Davids, if
18 necessary.

19 Q. As you understood it, did Mr. Smith, Paul Smith, share your
20 understanding about what you've just testified?

21 A. I have --

22 MR. ZACH: Objection.

23 THE COURT: Sustained.

24 Q. Do you know whether Mr. Smith made any offer to change the
25 date, if necessary; if you know?

1 A. I do not know.

2 Q. Now, am I correct that you finished your formal schooling
3 in 1971 or about 1971?

4 A. That is correct, yes.

5 Q. And you joined HSBC or what's now known as HSBC in 1971 as
6 a management trainee; is that correct?

7 A. That is correct.

8 Q. And even though your formal education ended in 1971, you
9 thereafter received constant internal training from HSBC; is
10 that fair to say?

11 A. I also took external degrees as well.

12 Q. And you said external degrees as well?

13 A. Yes, I did. I did all my post-school education part time.

14 Q. And you did that while you were working at HSBC?

15 A. Yes, I did.

16 Q. And did you do that during the workday or at night? How
17 did you juggle that with your --

18 A. I did it in my own time.

19 Q. In addition to that, HSBC sent you to outside seminars; is
20 that right?

21 A. Yes, they did.

22 Q. And the subject of at least some of those seminars was
23 what's become your area of specialty, which is operational and
24 regulatory risk; is that right?

25 A. That is correct.

1 Q. And, in fact, you became so well versed in this, in these
2 subject matters, that there came a time when you, yourself,
3 chaired seminars about that subject; is that right?

4 A. That is correct.

5 Q. Now, what's the reason why a company like HSBC provides
6 internal training and makes outside seminars like this
7 available?

8 MR. ZACH: Objection, scope.

9 THE COURT: Sustained.

10 Q. Did your training and your work assist you in helping you
11 understand the way that things were supposed to work?

12 A. It will have had a benefit, yes, of course.

13 Q. As did the, what you called your external schooling or
14 external work that you did on your own time, correct?

15 A. That is correct.

16 Q. All right. Now, when was the last time you had any
17 dealings with David L?

18 A. 2008.

19 Q. You haven't dealt with him since this particular project,
20 correct?

21 A. No, I haven't.

22 Q. As far as you know, does he still work for KPMG?

23 A. To the best of my knowledge.

24 Q. When was the last time you had any dealings with Mr. Yim?

25 A. 2008.

1 Q. In connection with this project?

2 A. That is correct.

3 Q. And as far as you know, is he still a senior executive at
4 KPMG in London?

5 A. I believe so. I have seen him since then, but I've had no
6 professional dealings with him since then.

7 Q. Understood. Now, who was it who was in New York to conduct
8 the KPMG review of Madoff Securities, was it Mr. Yim and David
9 L of KPMG or you?

10 A. The two Davids.

11 THE COURT: Mr. Frisch, I'm sorry. Would you find a
12 place in the next five minutes or so to stop for the break?

13 MR. FRISCH: Your Honor, I will. I just have a few
14 more minutes and I'll be done.

15 THE COURT: Very good. Thank you.

16 Q. As part of the KPM, to your knowledge, did the two Davids
17 meet with Mr. Madoff when they were in New York in November of
18 2005?

19 A. That is my understanding.

20 Q. So as part of the KPMG review of Madoff Securities, it was
21 the two Davids who met with Mr. Madoff and not you, correct?

22 A. That is correct.

23 Q. So would you agree with me, Miss Coe, that when it comes to
24 firsthand information about the KPMG review of Madoff
25 Securities, the two Davids have more to tell this jury than do

1 you?

2 MR. ZACH: Objection.

3 THE COURT: Sustained.

4 Q. Let me ask you this. Is it fair to say you flew from
5 London to New York to testify at this trial within the last few
6 days?

7 A. That is true.

8 Q. Fair to say Mr. Yim was not with you, correct?

9 MR. ZACH: Objection.

10 THE COURT: Sustained.

11 Q. The last time you saw Mr. Yim was in 2008, right?

12 A. That is not the last time I saw him. That's the last time
13 I had any professional dealings with him.

14 Q. I see. You've seen him on a non-professional basis since
15 2008?

16 A. Yes.

17 Q. And the last time you saw David L?

18 A. 2008.

19 MR. FRISCH: All right. Give me one second, your
20 Honor. In fact, rather than take the jury's time, we can break
21 now and I can go over my notes.

22 THE COURT: Very well then. We will begin our
23 15-minute morning break now. Members of the jury, please
24 continue to keep your thoughts to yourselves and be ready in
25 the jury room at 11:45. All rise.

1 Ms. Ng, would you escort the jury out.

2 (Jury exits)

3 THE COURT: Ms. Coe, you are now under
4 cross-examination, and so you are not to discuss your testimony
5 or any potential testimony with anyone. Do you understand?

6 THE WITNESS: Thank you, your Honor. I do.

7 THE COURT: Thank you. You may leave the witness
8 stand. We'll see you in 15 minutes.

9 (Witness temporarily excused)

10 See you all in 15 minutes.

11 (Recess)

12 THE COURT: Ms. Ng, would you bring the jury in,
13 please. All rise.

14 (Jury enters)

15 Good morning again, members of the jury. Please take
16 your seats. And please be seated, everyone. Mr. Frisch.

17 MR. FRISCH: Thank you, Judge.

18 BY MR. FRISCH:

19 Q. Welcome back, Ms. Coe.

20 A. Thank you.

21 Q. Do you know in what month in the year 2008 was the KPMG
22 2008 on-site review of Madoff Securities?

23 A. My recollection is April 2008.

24 Q. Was that one a surprise visit or a spot visit?

25 A. It wasn't a spot visit, no.

1 Q. And so that one was scheduled for a particular day, as far
2 as you know?

3 A. I'm not sure it was a particular day, but it was certainly
4 scheduled for April 2008.

5 Q. Meaning neither one of the two KPMG reviews, neither the
6 one in 2005 nor the one in 2008, were surprise or spot visits;
7 is that correct?

8 A. Neither were a surprise visit, that is correct.

9 MR. FRISCH: Ms. Coe, thank you very much. I have
10 nothing further.

11 THE COURT: Thank you, Mr. Frisch. Mr. Riopelle?

12 MR. RIOPELLE: We have no questions of this witness,
13 your Honor.

14 THE COURT: Thank you, Mr. Riopelle. Mr. Breslin?

15 MR. BRESLIN: We have no questions for Ms. Coe, your
16 Honor.

17 THE COURT: Thank you, Mr. Breslin. Mr. Krantz?

18 MR. KRANTZ: Yes. Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. KRANTZ:

21 Q. Good morning again, members of the jury. Good morning,
22 Ms. Coe.

23 A. Good morning.

24 Q. My name is Larry Krantz, and I represent George Perez in
25 this trial. I just have a few minutes of questioning for you

1 this morning.

2 Mr. Zach asked you a little bit about your
3 understanding of how Madoff Securities invested or traded the
4 money that was given to it by its clients; do you recall,
5 generally?

6 A. Yes, I do.

7 Q. And you indicated that it was traded, I think your words
8 were, as one amount; do you recall using that expression?

9 A. Yes, I recall that.

10 Q. I'm sorry, I didn't hear you?

11 A. Yes, sorry, I recall that.

12 Q. I just want to ask you a little bit about your
13 understanding at the time as to how Madoff Securities invested
14 its client's money, okay?

15 A. Okay.

16 Q. And, of course, we all know sitting here now that, in fact,
17 there was no real trading being done by Madoff Securities in
18 connection with this aspect of its business; you do know that,
19 correct, at this time?

20 A. At this time.

21 Q. But back in 2005 and through 2008, of course, you did not
22 know that fact, true?

23 A. That is correct.

24 Q. You believed at the time, prior to the arrest of
25 Mr. Madoff, that the trading was real, true?

1 A. That is correct.

2 Q. And am I correct that your understanding at the time was
3 that Madoff Securities purchased equities stocks on behalf of
4 its clients on a bulk basis?

5 A. That is my understanding, yes.

6 Q. And it did that as a principal, meaning in the name of
7 Madoff Securities, correct?

8 A. That is correct, yes.

9 Q. And was it your understanding at the time that it then
10 internally, within Madoff Securities, allocated those bulk
11 trades to its individual or institutional clients?

12 A. Effectively.

13 Q. And was it your understanding that it did that through some
14 sort of computer-generated allocation methodology?

15 A. I didn't know whether it was computer or manual. My
16 expectation was there would have been some IT involvement
17 because of the sheer volume that Madoff Securities was
18 potentially trading in the market.

19 Q. But whether computerized or manually done, there was some
20 sort of internal allocation of the bulk trades, correct?

21 A. That was my understanding, yes.

22 Q. And was it also your understanding that it allocated those
23 trades in that way on an average price basis for its different
24 clients?

25 A. That is my understanding, yes.

1 Q. And that was your understanding from 2005 until the demise
2 of Madoff in -- Madoff Securities in late 2008, correct?

3 A. Yes, that's correct.

4 Q. And that was not a process that you had any objection to at
5 that time, correct?

6 A. It's quite a common process.

7 MR. KRANTZ: No further questions. Thank you very
8 much.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you, Mr. Krantz. Ms. Lum?

11 MS. LUM: Yes. Good morning, ladies and gentlemen.

12 CROSS-EXAMINATION

13 BY MS. LUM:

14 Q. Good morning, Ms. Coe.

15 A. Good morning.

16 Q. My name is Sarah Lum. I'm an attorney representing Jerome
17 O'Hara. I have just a few questions for you.

18 You testified that you're here voluntarily; is that
19 correct?

20 A. That is correct.

21 Q. Are you being paid by anyone to appear at this trial?

22 A. No.

23 Q. And your travel expenses here are being paid by --

24 A. HSBC.

25 Q. You testified on direct that after you received the KPMG

1 report in 2006, that you were completely reassured?

2 A. That is correct.

3 Q. Right? And in fact, that report indicated that there
4 were -- that KPMG had identified 19 fraud risks; is that
5 correct?

6 MR. ZACH: Objection. Hearsay.

7 MS. LUM: Is it your understanding --

8 THE COURT: There is an objection; so you can consult.

9 MS. LUM: Sorry, sure.

10 THE COURT: If you can't resolve it, I'll speak with
11 you. Thank you.

12 (Counsel conferring)

13 THE COURT: Please move further into the corner.

14 (Counsel conferring)

15 BY MS. LUM:

16 Q. Let me ask you a different question, Miss Coe. From the
17 time of 2005, the KPMG review in 2005, to 2008 when it did its
18 second review, nothing had changed about the end-to-end process
19 in place at Madoff Securities; is that correct, to your
20 understanding?

21 A. It is my understanding that nothing had changed.

22 Q. And that end-to-end process being controlled totally by
23 Bernard Madoff was something that concerned you very much; is
24 that correct?

25 MR. ZACH: Object to the form.

1 THE COURT: Will you reformulate or consult?

2 MS. LUM: Let me see if I can reformulate.

3 Q. You testified earlier that you were concerned about the
4 fact that Bernie Madoff had total control of the process end to
5 end?

6 A. That is correct.

7 Q. And is it also your understanding that that remained in
8 place up until 2008?

9 A. That is correct.

10 Q. So is it fair to say that your concerns were -- about the
11 end-to-end process being totally under Bernie Madoff's control
12 never changed?

13 A. It was also a risk.

14 Q. And yet, you claim that you were completely reassured by
15 the report even though there was no independent verification of
16 what Bernie Madoff was telling KPMG; is that correct?

17 MR. ZACH: Objection to the form.

18 THE COURT: Sustained.

19 MS. LUM: Okay. Let me see if I can rephrase that.

20 Q. Is it true that there was never any independent
21 verification of what Bernie Madoff told KPMG?

22 MR. ZACH: Objection to the form.

23 THE COURT: Sustained.

24 Q. To your understanding?

25 THE COURT: Sustained. And if you need to consult,

1 you can do that.

2 MS. LUM: Okay. Let me move on.

3 Q. Isn't it true that the sample of client data that KPMG
4 reviewed was not statistically significant?

5 MR. ZACH: Objection.

6 THE COURT: Sustained. Ms. Lum, there were
7 discussions before. If you need me to go in the back room, we
8 will.

9 MS. LUM: Okay. I'll move on.

10 THE COURT: Thank you.

11 (Continued on next page)

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1 Q. Ms. Coe, you testified earlier that you were completely
2 reassured by the 2006 report, correct?

3 A. By the KPMG review, the feedback to me, yes.

4 Q. But in fact you weren't completely reassured, because you
5 commissioned a second review in 2008, is that correct?

6 A. I commissioned a second review in 2008. That had no
7 bearing on the level of reassurance that I had taken from the
8 first review. That was mainly a matter of standard routine for
9 any subcustodian review.

10 MS. LUM: Thank you, Ms. Coe. I have no other
11 questions.

12 THE COURT: Thank you, Ms. Lum.

13 Mr. Zach, any redirect?

14 MR. ZACH: No, your Honor.

15 THE COURT: Thank you, Ms. Coe. Your testimony is
16 concluded. Safe travels.

17 (Witness excused)

18 THE COURT: I believe we need to have a pause, is that
19 correct?

20 MR. BRESLIN: A small pause, your Honor.

21 THE COURT: If anyone needs to leave the room, come
22 back to your seat quickly. Otherwise we will just stay here
23 quietly.

24 FRANK DIPASCALI, resumed.

25 THE COURT: Good afternoon, Mr. DiPascali. Happy New